



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: **201239011**

Release Date: 9/28/2012

Date: July 3, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = individual

C = individual

D = individual

E = state

F = date

g = dollar amount

h = dollar amount

j = dollar amount

UIL:

501.03-00

509.01-02

170.09-00

Dear

We have considered your request for recognition of an unusual grant under Income Tax Regulations Section 1.170A-9(f)(6)(ii) and related provisions. Based on the information provided, we have concluded that the proposed grant does not constitute an unusual grant under sections 1.170A-9(e)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

**Facts:**

You were formed as a nonprofit public benefit corporation in E on F. You operate a low cost spay and neuter clinic for the public, and provide educational materials regarding the health and care of dogs and cats. You charge for these services including receiving insurance reimbursement, and are also supported through donations and unrelated income.

You applied for and were recognized as exempt from federal income tax under Internal Revenue Code Section 501(c)(3). When your advance ruling period ended, you were classified as a private foundation. Subsequently, you requested termination of your private foundation status under 507(b)(1)(B). We determined you were reasonably expected to terminate your private foundation status and are currently treated as a public charity described in section 509(a)(2) for an advance period of 60 months.

You determined you could better fulfill your charitable purpose if you were to also operate an animal shelter, accept stray dogs and cats, and operate an adoption center. To do so, however, you would need a significantly larger facility.

B is your incorporator, initial agent for service of process, a substantial contributor pursuant to section 507(d)(2), and a disqualified person pursuant to section 4946(a). B has offered to contribute approximately g dollars per year for four years (or until sufficient funds are raised) to allow you to complete construction of an additional facility, pursuant to appropriate design plans and construction bids. The grant would pay for construction costs of a multi-purpose animal shelter/adoption center. Over the past ten years, B has given over j dollars to you in donations, including funds allowing the purchase of your current facility. You consider B to be a continual supporter and contributor. You also provided copies of Form 990PF, which show B as a substantial contributor to you for a continued period since your inception.

You have a governing body consisting of five directors and three officers. The directors are unrelated to B, however, C, your chairman and president, is B's spouse. D, your Executive Director, a full time compensated employee, is C's daughter.

You have submitted documentation requesting recognition that the proposed grant from B be classified as an unusual grant under sections 1.170A-9(e)(6)(ii) and related provisions of the regulations.

**Law:**

Section 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) of the regulations set forth the criteria for an unusual grant.

Section 1.170A-9(f)(6)(ii) of the regulations states that, for purposes of applying the 2 percent limitation described in subdivision (i) of this subparagraph to determine whether the 33 1/3 percent-of-support test in subparagraph (2) of this paragraph or the 10 percent-of-support limitation in subparagraph (3)(i) of this paragraph is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction if such contributions meet the requirements of subdivision (iii) of this subparagraph. The exclusion provided by this subdivision is generally intended to apply to substantial contributions or bequests from disinterested parties which contributions or bequests:

- (A) Are attracted by reason of the publicly supported nature of the organization; and
- (B) Are unusual or unexpected with respect to the amount thereof; and
- (C) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in subparagraph (4) or (5) of this paragraph.

Section 1.509(a)-3(c)(4) of the regulations states that, in determining whether a particular contribution may be excluded under subdivision (ii) of this subparagraph, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Such factors may include:

- Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in Internal Revenue Code Section 4946(a)(1)(C) through (G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this subdivision will ordinarily be given more favorable consideration than a contribution made by a person described in this subdivision.
- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Except in the case of a new organization, whether, prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public.
- Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in subparagraph (1) of this paragraph without the benefit of any exclusions of unusual grants pursuant to subparagraph (3) of this paragraph;
- Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) continues directly or indirectly to exercise control over the organization;

- Whether the organization has a representative governing body as described in Income Tax Regulations Section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions (within the meaning of Income Tax Regulations Section 1.507-2(a)(8)) have been imposed by the transferor upon the transferee in connection with such transfer.

**Application of Law:**

We have determined the proposed grant from B does not constitute an unusual grant within the meaning of section 1.170A-9(f)(6)(ii) and related provisions of the regulations. While the proposed grant may adversely affect your public charity status, it is not attracted by reason of your publicly supported nature and is not unusual or unexpected with respect to the amount thereof. The following factors are present:

- You received multiple grants totaling over j dollars from B from 1999 to date
- The purpose of the proposed grant is to support the construction of your animal shelter/adoption center. This is the same purpose as the initial contributions received from B to establish your animal clinic
- Given the Forms 990PF provided, the overwhelming majority of your total support since inception will have come from B
- C is one of your officers, she is also B's spouse
- D is your Executive Director, she is also C's daughter

The proposed grant is not attracted by reason of your publicly supported nature, but rather by your historical relationship with B. The contributions previously received from B detail this relationship, and together, they demonstrate a stream of funds from B to you. Furthermore, the proposed h dollars grant is not unusual or unexpected with respect to the amount since you have previously received a series of contributions from B, such as funding when you were initially formed and to aid in the establishment of your current animal clinic.

In addition, after reviewing the factors detailed in section 1.509(a)-3(c)(4) of the regulations, we have determined the proposed grant from does not constitute an unusual grant.

- The grant is being made by B, a substantial contributor throughout your existence and a disqualified person pursuant to section 4946(a). When determining unusual grant classification, contributions received from those who have previously not contributed a substantial part of an organization's support

are given more favorable consideration than contributions from organizations who have previously substantially contributed.

- The grant would be classified as an inter vivos contribution.
- The grant is in the form of cash, which will be used to further your exempt purposes.
- You received a determination letter approving your section 501(c)(3) status on October 1999. Review of your previously filed Forms 990-PF shows that, while you have received public support, the majority of your funds since inception have been received from B. In addition, while you have been in existence you have not always attracted a significant amount of public support, as evidenced by your private foundation status.
- Review of previously filed Forms 990PF you submitted shows that you did not always met the one-third support test without the benefit of any exclusions of unusual grants. You are currently in a 60-month advance ruling period to terminate your private foundation status under section 507(b)(1)(B) of the Code.
- One of your officers is B's spouse. Your Executive Director is B's stepdaughter. This illustrates a relationship between you and B.
- The grant from B is contingent on two conditions. First, B has offered to contribute to your building fund until sufficient funds are raised to allow you to complete construction. Second, the grant must be classified as an unusual grant so that your 509(a)(2) status is not adversely affected to allow B a charitable contribution deduction to the extend of 50% of his contribution base with respect to such contributions.

**Applicant's Position:**

You agreed B has been a substantial contributor since inception. You also agreed that his past contributions enabled you to become established and allowed you to acquire your current facility. You believe that greater emphasis should be on the unusual nature of the gift and on your stability as a publically supported clinic over the past five years.

You contend that the grant is unusual because its purpose is to build a proposed new second facility in a new area, not to support the operating budget of the current facility.

You contend that five years of a stable, publically supported operation is sufficient to distinguish this grant from prior donations made by B. You believe that there is some point in time at which a history of stable, publically supported operations will separate a new donation from the prior operating history of reliance on a few donors, including, in particular, B. You stated five years is a sufficient period.

**Service's Response to Applicant's Position:**

While any initial grant could be considered unusual and/or unexpected, subsequent grants from the same individual are logically more usual and more expected. B has shown a history of providing support, in significant amounts, to the point where the proposed grant of the given amount is not unusual.

The factor listed in section 1.509(a)-3(c)(4)(i) of the regulations pertains to whether a contribution was made by any person who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager with respect to the organization. B has been a substantial contributor to you throughout your existence and has a continuing relationship with you since inception.

The factor listed in section 1.509(a)-3(c)(4)(iv) of the regulations pertains to whether the organization has carried on an actual program of public solicitation and exempt activities, and has been able to attract a significant amount of public support. Since inception you have not always attracted significant amount of public support. You are currently in a 60-month advance ruling period to terminate your private foundation status under section 507(b)(1)(B) of the Code. If you receive the proposed grant, the overwhelming majority of your total support since inception will have come from B.

**Conclusion:**

Based on the facts described above, we have determined that the proposed grant from B does not constitute an unusual grant within the meaning of sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) and of the regulations. B is a disqualified person, a regular substantial contributor, and the grant would not be considered unusual or unexpected.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Please keep a copy of this letter in your permanent records. If you have any questions regarding this matter, please contact the person whose name and telephone number appear in the heading of this letter.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations